THE

AMERICAN LAW REGISTER.

SEPTEMBER 1873.

THE LAW OF RELIGIOUS SOCIETIES AND CHURCH CORPORATIONS.

CHAPTER II.—(*Continued.*)

THE DIFFERENT FORMS OF CHURCH ORGANIZATIONS—LEGAL MODES AND REQUISITES OF ORGANIZATION.

It is a general rule that every person of proper intellectual capacity, may unite with others assenting thereto, in perfecting the organization of a religious society according to the forms required by the *ecclesiastical* faith and church government which may be adopted. And new members may be admitted, or old ones be suspended, expelled,[57] or permitted to withdraw, according to

[57] Churches may, according to their discipline, try and expel members. See notes 25, 42, *ante; Farnsworth* v. *Storrs*, 5 Cush. 412; *Shannon* v. *Frost*, 3 B. Monroe 253; *People* v. *Farrington*, 22 How. Pr. R. 294; Hoff. Ecc. L. 32; *Marion Benev. Soc.* v. *Com.*, 31 Pa. St. 82; Buck Mass. Ecc. L. 70; Dexter's Congregationalism 260; *Remington* v. *Congdon*, 2 Pick. 313; *York* v. *Pease*, 2 Gray 282; *Barrows* v. *Bell*, 7 Gray 314; *Com.* v. *Drake*, 15 Mass. 161; *Com.* v. *Knapp*, 9 Pick. 496; *Fairchild* v. *Adams*, 11 Cush. 549; 14 Law Reporter 278–395; 1 Choate's Writings 167; Buck Mass. Ecc. L. 244–245. See *Dr. McPheeter's case*, "Presbyterian," June 28, 1864; "Christian Observer," for May 1865. Angell & A. Corp. 239; 2 Bl. Com. 37; 1 Kyd. Corp. 15. Moses on Mandamus 185; *Evans* v. *Philada. Club*, 14 Wright (Pa.); *Com.* v. *St. Patrick's Soct.*, 2 Binney R. 448; *Com.* v. *Philanthropic Soct.*, 5 Binn. 486; *Com.* v. *Guardians*, 6 S. & R. 469; *Barrows* v. *Mass. Med. Soct.*, 12 Cush. 402. See note 69, *post.*

May remove persons who are disturbing meeting. *McLain* v. *Matlack*, 7 Ind. 525; *Lee* v. *Louisville Pilot Benev. Ass'n*, 2 Bush (Ky.) 254; Hoffmann's Ecc. L. 90–92; Gibson's Codex 29; 2 Keble 124; *Wall* v. *Lee*, 36 N. Y. 14.

the same ecclesiastical regulations. The right of uniting with and attending the meetings of a religious society is subject to some qualifications.

The father or parent having the custody and control of a minor child may, during the minority, determine the extent and character of the religious privileges which such child shall enjoy, subject to the jurisdiction which courts exercise in determining the custody and guardianship of minors.[58]

As to civil actions for disturbance of persons engaged in religious worship, see Hoff. Ecc. L. 257; *First Bapt. Ch.* v. *Schenectady R. R.*, 5 Barb. 79; *Trustees* v. *Utica R. R.*, 6 Barb. 313; *Owen* v. *Hinman*, 1 Watts & Serg. 548; *Farrel* v. *Warren*, 3 Wend. 253; *Foster* v. *Smith*, 10 Wend. 377; *People* v. *Fuller*, 17 Wend. 211; *Bigelow* v. *Stearns*, 19 Johns. R. 39; *Wall* v. *Lee*, 34 N. Y. R. 141.

Injunction to prevent nuisances. *Owen* v. *Hinman*, 1 W. & S. 548; *Bap. Ch.* v. *Utica R. R.*, 5 Barb. 313; *Sparhawk* v. *Union R. R. Co.*, 54 Penn. St. 401. Hilliard on Injunctions 310 *n.*

[58] At the August session, 1842, of the Common Pleas for Lycoming county, Pa., ELLIS LEWIS, President Judge, decided an interesting case: *Com.* v. *Armstrong*. Armstrong's daughter had been baptized in the Presbyterian Church in early infancy, and brought up in the doctrines of that church. At the age of 17 she became convinced by the preaching of a Baptist clergyman, and desired to be received into the Baptist church by immersion. The father forbade the Baptist clergyman to administer the rite, threatening personal injury if he did. The clergyman received the daughter into his church by immersion without the father's knowledge. The father, learning this, made such threats that the clergyman applied to the county court for an order requiring the father to give security for preserving the peace. The court required the father to give bond to keep the peace, but as the Act of March 18, 1814, gave a discretion to require the prosecutor, the defendant, or the county to pay the costs, the clergyman was required to pay the costs, the court holding that the prosecutor did not act "within the line of his duty," but had "interfered with the lawful authority of the father over his own offspring in its minority."

The judge cited the Decalogue; Prov. 30: 19; Deut. 29: 12; Prov. 18: 8; Prov. 6: 20; Prov. 15: 5; Deut. 27: 16; Ephesians 6: 1; Collossians 3: 20; Luke 2: 51; Paley, Wayland and Adams's Mor. Phil.; 1 Blackst. 450; 2 Kent Com. 205; and said, "It is the duty of the parent to maintain and educate the child, and he possesses the resulting authority to control it in all things necessary to the accomplishment of these objects. An appeal does not lie to the ministers of the Gospel." And he argued that any other rule would allow a child to unite with Mahomedans, Mormons, &c. This decision was approved by Chancellor KENT in a letter, Oct. 6, 1842. And see *Matter of Wollstencraft*, 4 Johns. Ch. R. 80; *Com.* v. *Addicks*, 5 Binn. 520; *Ex parte Crouse*, 4 Whart. 9; Hoffman's Ecc. L. 64.

In case of separation of husband and wife the father's right to the control of the child will generally be preferred, but if the good of the child require, the custody will be given to the mother or even a stranger. 4 Johns. Ch. R. 80; *Com.* v. *Nutt*, 1 Browne 143; *Com.* v. *Addicks*, 2 S. & R. 174; *Matter of Kottman*, 2

The proper guardian of the person of a minor child in this respect stands *in loco parentis.*

Married women are undoubtedly, by the liberal spirit of our laws, permitted to enjoy religious privileges according to their own choice.[59]

There are authorities which recognise the right of the husband, in extreme cases, to make a peaceable recaption of the wife, or secure her custody by *habeas corpus*, even against her consent, since he is entitled to her society. If, therefore, a wife should embrace a religious faith which secluded her from the husband, or a religious service or practice which withdrew her from his society, the jurisdiction of the courts might, according to these authorities, be called into requisition to restore her to the husband's society.[60]

It is evident that *men* have made the laws, since there does not seem to be any authority to restore a husband who secludes or withdraws himself from a wife's society.

Hill S. C. R. 263; *U. S.* v. *Green*, 3 Mass. 482; 2 Kent 220. See cases collected in Bingham on Infancy 158, note 2.

As to natural children; *Com.* v. *Fee*, 6 S. & R. 255; *People* v. *Landt*, 2 Johns. R. 375; *Carpenter* v. *Whitman*, 15 Johns. 208; *Wright* v. *Wright*, 2 Mass. 109; *Com.* v. *Anderson*, 1 Ashm. 55. In *Re Doyle*, 1 Clarke Ch. 154; *Wright* v. *Wright*, 2 Mass. 109; *Somerset* v. *Dighton*, 12 Mass. 387; *Dalton* v *State*, 6 Blackf. (Ind.) 357; *Ex parte Knee*, 4 B. & P. 149; *King* v. *Hopkins*, 1 East 579.

[59] As to their right to vote in religious corporations see Hoffman's Ecc. L. 26, 41, 64; Grant on Corp. 6; Palmer's Rep. 77; *Sutton Hospital Case*, 9 Coke R. 10. By the N. Y. Stat. April 6, 1784, the male members belonging to churches might elect trustees. As to other statutes see Hoff. Ecc. L. 45, 46, 59, 161. See note 69, *post.* The Synod of the [late German] Reformed Church at its May session 1873, at Shelbyville, Illinois, disapproved of the "action of the Eastern Ohio Classis" which denied women the right to vote. And the Synod resolved "that *all* regular communicant members are entitled to vote in Congregational elections." See Minutes, p. 55.

[60] *Anthony* v. *Haney*, 8 Bing. 186.

In the case of *Agnes Williamson* v. *Edward Hurd et al.*, recently tried in District Court, Hamilton county, Ohio, in Cincinnati, *V. Worthington*, attorney for defendants, submitted an elaborate argument to prove that women are not "to be held to the same responsibility as men," and that it is man's "right and duty to rule over and protect her, and it is her right and duty to help man and be protected." He cited sacred and profane history. 1 ch. Gen. 27; 2 Id. 7, 15, 18, 19, 20, 21, 25; Hist. of Bible by Rev. G. R. Glag, vi. p. 70, 86; 3 Gen. 16; 6 Id. 2; 2 Sam. ch. 13, v. 11–14; 5 ch. Eph. 22–33; 5 ch. Colossians, 18–19; 2 ch. Tim. 8–14; Shakspeare "Taming of the Shrew," Act 3, Scene 2; Works of Taylor and Maine; Sir John Lubbock on "Civilization and Primitive Condition of Man," p. 74. He argued from physiology, psychology, phrenology, and the general course of legislation.

Assuming then that a religious society is organized according to the *ecclesiastical* requisitions of the denomination whose faith and form of church government is adopted, it is to be borne in mind, from what has already been stated (*ante* p. 347, *et sequor*,) that there may be SEVEN DIFFERENT LEGAL FORMS OF CHURCH ORGANIZATIONS, and that each of these will, in its *legal organization*, make (*ante* 353, *et seq.*) FIVE DISTINCT INQUIRIES.

When these are disposed of, other heads of inquiry will remain to be considered as heretofore suggested. (*Ante*, p. 211.)

FIRST FORM OF CHURCH ORGANIZATION—UNINCORPORATED SOCIETY.

A large proportion of all the religious societies in many of the states are unincorporated. But it is very rare that any unincorporated society attempts to seek or maintain its organized purposes without the aid of common law trustees, or trustees having corporate or *quasi* corporate powers, or of a corporation proper. There are religious societies for whose members halls or places of meeting are temporarily leased without trustees or a corporation. But these are rare.[61]

In this connection it is only proposed to treat of *such* unincorporated societies as *permanently* seek their organized purposes without the aid of trustees or of a corporation. These organizations or societies are extremely rare, though there are some such, as the United Society of Believers, commonly called Shakers, the Separatists and others. These are religious societies, formed not only for religious worship, but to maintain, as a part of their creed or policy, a community of property.[62]

In answer to the several inquiries heretofore suggested as to

---

[61] The "Philadelphia Telegraph" recently said:

"The Dunkers are a very curious religious sect, originating in the old world, and flourishing in various parts of our country, especially in Lancaster county, Pa. They are well-to-do farmers. Their ministers are uneducated and unpaid farmers; their religion is a compound of honesty, hard work, and legal rites; their churches are barns, and their chief meetings concentrate themselves in half yearly services before and after harvest."

[62] As to Shakers, see note 36, *ante*; *Anderson* v. *Brock*, 3 Maine 243.

As to unincorporated societies, see note 47, *ante*. They will be protected in their possession of property: *Beatty* v. *Kurtz*, 2 Peters 566; High on Injunctions 241; *Kisor's Appeal*, 62 Pa. St. 428.

Capacity to take by devise: *In Re Tickner Estate*, 4 American Law Register N. S. 269, and valuable note p. 274; *Owens* v. *Mis. Soct.*, 14 N. Y. 380.

each of the legal forms of church organizations, it may be said in general terms:

1. This form of legal organization it is believed is not restricted or prohibited by constitutional provision or statutory or common law, or equity principles in any state of our Union.

It can have generally the legal rights and remedies of any partnership or voluntary association.

According to the plan of treating the various subjects of inquiry heretofore proposed (*ante*, p. 211), it will be reserved for separate and subsequent chapters to consider (1) how property may be acquired and titles held, (2) the organization maintained, (3) the mode of controlling property, &c., &c.

2. The existing societies of this class are generally congregational in character, at liberty to form and change their religious belief.

3. But such societies may be, and some of them are, by their articles of association, so organized that the property held in common is for those entertaining a given religious faith and who conform to prescribed rules. The mode of so arranging property is more properly to be considered in the chapter which will treat of property titles, &c.

4. This class of societies are not generally in connection with or subject to the ecclesiastical authority of any body higher than the particular society. But there is no reason why such societies may not be so constituted.

There can be but little practical necessity for any legal provision by statute to authorize or regulate this form of organization. It is created as at common law by such written articles of association as religious societies may adopt or may rest in parol.

SECOND FORM OF CHURCH ORGANIZATION—UNINCORPORATED SOCIETY WITH UNINCORPORATED TRUSTEES.

A large proportion of all religious societies are unincorporated, and hold their property through the intervention of common law or unincorporated trustees. The jurisdiction exercised by courts of equity over trusts of this character is generally sufficient to enable these organizations to accomplish every desired purpose. Some of the principles of this jurisdiction have already been stated (note 48, *ante*).

In answer to the several inquiries heretofore suggested as to

each of the legal forms of church organization, it may be said in general terms:

1. Such organization is not restricted or prohibited in any state.[63]

2. These organizations may be Congregational, at liberty to form and change their creed or otherwise. In practice they are both Congregational and Associated.

3. These organizations, either of the Associated or Congregational class, may have property devoted to their use for the purpose of maintaining a particular and defined unchangeable religious faith.

4. They may, of course, be of the Associated class, in connection with and subject to the authority of some higher ecclesiastical body.

The consideration of the mode of holding property, with a right to devote its use to opinions which may from time to time change, or which shall be unchangeable, belongs to the chapter which will treat of property, &c.

There is no necessity for a statute to authorize or regulate these organizations. They may be created by such written articles of association as religious societies adopt, or may rest on the mutual parol understanding of parties to them. The *ecclesiastical* forms of organization create the *legal* organization, but to this, of course,

---

[63] The effect of the Statute of Uses is to be considered where such statute is in force. But this, as to all legal forms of church organization involving a trust, will require a separate chapter. See Perry on Trusts, §§ 5–6, and Id. §§ 298–299. Stat. of Uses not in force in Ohio: *Helfenstein* v. *Garrard*, 7 Ohio R., part 1, p. 275.

As to the principles by which to determine when the English Statutes and common law are to be regarded as in force in the colonies and states here, see 1 Bishop Marriage and Divorce, §§ 66, 86, 43, 59; Bishop First Book, § 59; Bishop Crim. L. (5th ed.) ch. x; *Att'y-Gen'l* v. *Stewart*, 2 Merivale R. 143; *Mayor of Lyons* v. *East India Co.*, Moore's Privy Council R., vol. 1, p. 175: 1 Kent 472; *Bogardus* v. *Trinity Ch.*, 4 Paige Ch. 178; Chalmers's Opinions, vol. 1, p. 194; Smith's Hist. N. Y. vol. 1, p. 243; Hoff. Ecc. L. 182. Note 27, *ante*.

As to validity of subscriptions for building churches and charities: 1 Parsons Cont. 378; *Trustees* v. *Garvey*, 53 Ills. 401; *McClure* v. *Wilson*, 43 Ills. 356; *George* v. *Harris*, 4 N. H. 535. But see *Brumfield* v. *Carson*, 38 Ind. 94.

As to pews: *Curry* v. *First Presby. Soct.*, 2 Pittsburgh L. J. 105; *Succession of Gamble*, 23 La. An. 9; *First Bap. Soct.* v. *Grant*, 50 Me. 245; *Abernathy* v. *Soct.*, 3 Daly N. Y. 1; *French* v. *Old S. Soct.*, 106 Mass. 479. Compare 3 Daly N. Y. 1; *Croker* v. *Soct.*, 106 Mass. 489; *Price* v. *M. E. Ch.* 4 Ohio 541.

must be added the proper deed or instrument by which property is held in trust.

THIRD FORM OF CHURCH ORGANIZATION—UNINCORPORATED SOCIETY WITH THE AID OF A CORPORATION OR TRUSTEES HAVING CORPORATE OR QUASI CORPORATE POWERS TO HOLD PROPERTY.

This form of organization is merely an improvement on the preceding. It is unusual to find a corporation created as a mere trustee to hold property for an unincorporated society. More frequently the corporation consists of the members of the religious society, who elect officers to manage the temporalities, as in the next form of organization to be mentioned. But it is possible to have a corporate body created as the mere trustee of an unincorporated society or congregation.[64]

There is, perhaps, no general provision made for such corporation in any state as totally distinct from the members of a church, nor does there seem to be any necessity for such arrangement, unless indeed, that a corporation might hold property for specified purposes relieved of liability for debts of the congregation.[65]

There are distinctions made in some of the states between the corporation and the congregation it represents. (Notes 50–56, *ante.*)

---

[64] See New York Act of April 6, 1784, Laws ch. 18; Hoffman's Ecc. L. 41; Act March 17, 1795, Laws, ch. 25, Hoffman 44–45. See Act of 1813; *People* v. *Fulton*, 11 N. Y. 94.

Under the Maryland Act the trustees and not the congregation are the corporation: *Bethel Ch.* v. *Carnach*, 2 Md. Ch. 143; Tyler, § 724.

See note 50, *ante; People* v. *Fulton*, 11 N. Y. 94; *Petty* v. *Tooker*, 21 N. Y. 267; 2 Denio 492; 3 Paige 296; *Bundy* v. *Birdsall*, 29 Barb. 31.

In *Jackson* v. *Hammond*, 2 Caines' Cases 33, it is decided that a devise to a *secular* corporation in trust for minister of an unincorporated society is void. See *Ayers* v. *Meth. Ch.*, 3 Sandf. S. C. R. 351, commenting on this case. See notes 11, 53, 72.

But a corporation unrestrained by special provision can execute trust: *Tucker* v. *St. Clement*, 3 Sandf. S. C. R. 242, affirmed 4 Seld. 558 *n*; *Williams* v. *Williams*, 8 N. Y. 525. But where the purposes for which a corporation may hold property are enumerated this excludes all others: *Jackson* v. *Hartwell*, 18 Johns. 422.

[65] See note 51, *ante.* Also *Magie* v. *German Ch.*, 2 Beasl. N. J. Ch. 77; *Barnett's Appeal*, Sup. Ct. Pa. 1863; Pittsburgh Legal J., vol. 11, p. 210; *Rife* v. *Guyer*, 59 Pa. St. 393; *Wells* v. *McCall*, 64 Id. 207; *White* v. *White*, 30 Vt. 342; *Cloot* v. *Bool*, 8 Paige 83; *Bramhall* v. *Ferris*, 14 N. Y. 44; *Doswell* v. *Anderson*, 1 P. & H. (Va.) 185; *Raikes* v. *Ward*, 1 Hare 445; *Crocket* v. *Crocket*, 1 Id. 451.

There are very many unincorporated religious societies having property held by trustees to whom the statute has given a *quasi* corporate capacity, or rather has provided a mode of perpetuating trustees without the necessity of applying to a court of equity, and without providing a mode in the trust deed. These subjects belong to a subsequent chapter on the mode of maintaining church organizations. But it is appropriate now to say this is one among the best modes of perfecting a legal organization of a religious society. It is of course only practicable where provision has been made by statute as to trustees.

Such provision has been made in the District of Columbia, in Ohio and other states, and some principles applicable to these have been already stated. (Note 49, *ante.*)

In answer to the several inquiries suggested as to each of the legal forms of church organizations, it may be said generally:

1. This form of organization, so far as it rests on corporate or *quasi* corporate trustees, is dependent on statute and is, of course, not prohibited in any state, but in some is authorized by statute.

2. Such organization may be Congregational, at liberty to form and change its creed and form of church government. In practice these organizations are both Congregational and Associated.

3. These organizations, either of the Associated or Congregational class, may have property, through trustees or corporations, devoted to their use, for the purpose of propagating a particular and defined unchangeable religious faith.

4. They may, of course, be of the Associated class, in connection with and subject to the authority of higher ecclesiastical bodies.

As a general rule the *ecclesiastical* organization of a religious society of this class, whether by written articles of association, or by parol, perfects its *legal* organization, and the trustees are, by their appointment and proper conveyance, charged with the duties entrusted to them.

FOURTH FORM OF CHURCH ORGANIZATION—INCORPORATED SOCIETY.

In some of the states a large majority of all religious societies are incorporated. In others a majority are unincorporated congregations, with trustees holding property, and this is especially so in those states which give the trustees a kind of corporate succes-

sion. Either form of organization is abundantly sufficient. The church organization by a corporation is preferable to all others where there are no restraints upon the corporate power to receive property or execute trusts, and where the control of property is so arranged as to carry out the purposes of those interested.

The Congregational Churches generally desire organizations which leave them respectively free to form and change their creeds and internal policy. When this is the case the corporation should be so arranged that no official body controlling the temporalities should be able to defeat the will of a majority of the members.

Of course it is impossible to provide that men or church members shall not change their opinions, but it is competent to provide that a given creed, or confession of faith, or articles of religion shall be adhered to, and that those only who abide in that faith shall continue to enjoy church privileges. This may be done in an unincorporated society by written articles of association, and property may be devoted to the teaching of such creed by proper trusts in deeds of conveyance. The articles of association indeed, themselves, might so provide.[66]

So the same thing may be accomplished in a corporation either for a Congregational Church or for Churches of the Associated class by proper provisions in act of incorporation, by trust provisions in deeds (notes [66] and [72],) of conveyance, or possibly by articles of association sufficiently explicit and perpetual in their character. So the Associated Churches may be made to acknowledge the perpetual binding obligation of the higher ecclesiastical bodies with which they stand connected, either as they exist or as they may be. The propriety of this is the more apparent since the right of secession has been asserted on behalf of churches in the Associated connection, and it has been supported by evidence of ecclesiastical usage and rights determined accordingly.[67]

---

[66] See note 55, *ante*. *Heckman* v. *Mees*, 16 Ohio 583. But see *Smith* v. *Nelson*, 18 Vt. 511; Tyler, § 374.

As to trusts to be executed by corporations see note 72, *post*.

[67] *Ferraria* v. *Vasconcelles*, 23 Ills. 456: s. c. 27 Ills. 238: s. c. 31 Ills. 26. Such right of secession may be provided against, by provision in a charter, or conveyance to corporation, or trust deed; *Watson* v. *Jones*, 13 Wallace 680; *Petty* v. *Tooker*, 21 N. Y. R. 273; Schnorr's Appeal 67 Pa. St. 138, in which SHARSWOOD, J., delivered a very able opinion. And see note 55, *ante*.

In Hoffman's Ecc. L., ch. xxiii., is a review of cases affecting the right of property in cases of church *divisions*. See notes 53, 54, 55, *ante*.

In some of the states a special act of incorporation may, in the discretion of the legislature, be procured for each church. In some states provision is also made for the incorporation of churches under a general legislative act, by certain proceedings of a congregation, of which a record is to be made by a designated officer.

In some states there are constitutional provisions prohibiting special legislative acts, and authorizing the creation of corporations under general laws.

Regulations have been made by law for the District of Columbia and the Territories of the United States. Reference has already been made to some of these constitutional and statutory provisions. (Notes 18, 52, *ante.*)

Where corporations are only authorized under general laws, difficulty has been sometimes experienced to find them sufficiently

---

Hoffman also discusses the cases in which courts of equity interfere to enforce or prevent the perversion of a trust.

So does High on Injunctions, ch. v; Hilliard Inj. 373.

None in case trustees build new church and part of members use old church. *Miller* v. *English*, 2 Halst. Ch. 304. See *Scott* v. *Stipe*, 12 Ind. 74.

None for trustees elect against old-remedy *quo warranto*: *Rap. Ch.* v. *Parker*, 36 Barb. 171. But see *Trustees* v. *Hoessli*, 13 Wis. 348.

None for pewholder in case of rebuilding: *Henry* v. *St. Peter's Ch.*, 2 Edw. Ch. 608; *Van Horn* v. *Talmadge*, 4 Halst. Ch. 108; *Ref. Ch.* v. *Draper*, 97 Mass. (1 Browne) 352.

As to injunctions generally: *Beatty* v. *Kurtz*, 2 Pet. 566; *Com.* v. *Viatt*, 2 Allen 515; *Mayor* v. *Soct.*, note *a* to p. 378, Hilliard Inj.; *Arkenburg* v. *Wood*, 23 Barb. 360 *contra*; *Att'y-Gen.* v. *Welsh*, 4 Hare (30 Eng. Ch.) 572; *Brunnemeyer* v. *Buhre*, 32 Ills. 183; *Wyatt* v. *Benson*, 23 Barb. 327; *Perry McEwen*, 22 Ind. 440; *Chase* v. *Cheney*, 10 Am. Law Reg. N. S. 295.

Not eject minister by: Hilliard Inj. 446; *Young* v. *Ransom*, 31 Barb. 49; *Walker* v. *Wainwright*, 16 Barb. 486; *Nicholson* v. *Knapp*, 9 Sim. 326; *Daily* v. *Archbishop*, Flan. & Kel. 263; *Potter* v. *Chapman*, Dick 146, Ambl. 98.

As to the distinction between incorporated and unincorporated churches, and the effects of a corporation in determining trusts and property rights, see note 55, *ante*; High on Injunctions, § 229; *Burrell* v. *Associate Ref. Ch.*, 44 Barb. 282; *Petty* v. *Tooker*, 21 N. Y. 267; *Robertson* v. *Bullions*, 1 Kern. 243.

The English rule for determining the purpose of the *founder of a trust by a donation*, is stated in *Att'y.-Gen'l.* v. *Pearson*, 3 Merivale 395. This has been partly followed here: *Bowden* v. *McLeod*, 1 Edw. Ch. 588; 2 Denio 492; 3 Paige 296; 41 Pa. St. 9; 43 Id. 244.

There is a distinction between property held by *donation* or where the *use* is the consideration, and those cases where property is *purchased*, so far as the right to change the use is concerned. See note 55, *ante.*

comprehensive to meet the exigencies or wants of particular cases, or containing provisions which would defeat special objects.

This brief view of the subject leads to the inquiry as to how a church or religious society may perfect its *legal* organization as a corporation. When the ecclesiastical organization is perfected the next step is to procure an act of incorporation or charter.

A special charter is simply an act of the legislature, the general form of which is familiar to all.

Such charter must be *accepted* and acted upon by those authorized in the first instance to do so.

The *form* of the charter will be more properly referred to in considering the four inquiries appropriate to each of the legal forms of church organizations, and in a subsequent chapter which will treat of the manner of acquiring and holding church property.

But the *acceptance* of a special act of incorporation, or of the corporate franchises conferred by it, will generally be by substantially similar acts and forms in particular churches of every religious denomination, and they will depend somewhat on the provisions of the charter. No very formal acceptance is requisite. It may be sufficiently indicated by continuous corporate action in the corporate name.[68]

The legal organization of a church corporation, under a general law, will require more formality. All the requirements of the statute must be substantially pursued in order to secure a corpo-

---

[68] It will be appropriate to give a *form* of acceptance in connection with other forms elsewhere hereafter.

For *forms of special charters*, see for [German] Reformed Church: Acts and Proceedings of Gen. Synod 1869, p. 85. Same for 1866, pp. 17, 19. See note 38, *ante*.

Episcopal: see Hoffman's Ecc. L. 16, 94.

For Reformed [Dutch] Church in America: Hoffman's Ecc. L. 103, 109, 115; New York Act of 1696 and Act of 25th February 1783, and Act of 1813.

See also as to general statutes in New York for this church: Hoffman Ecc. L. 110. For Act of April 7 1819, incorporating General Synod, see Laws, ch. 110.

For Catholic: New York Acts, April 11 1817, and April 3d 1821, (Laws, ch. 237, ch. 205); St. Peters' Ch. N. Y. Hoffman Ecc. L. 142, 144; Act April 14th 1817, (Laws, ch. 239). St. Patrick's Cathedral, N. Y.

In Massachusetts: Buck Mass. Ecc. L. 117, 119.

The local statutes of many of the states contain special acts of incorporation. These have been often drawn without any knowledge of the principles of law applicable to religious societies.

rate existence.[69] The statutes generally contemplate a prior *ecclesiastical* organization.

---

[69] As to the organization of church corporations and presumption of regularity, &c., see note 39 *ante*; Hoffman's Ecc. Law 50, 52, and cases cited, pp. 66, 67.

Ferraria v. *Vasconcelles*, 23 Ills. R. 456; *All Saints Church* v. *Lovett*, 1 Hall Sup. Ct. R. 191; Tyler Ecc. L. § 120; *People* v. *Peck*, 11 Wend. 604; *M. E. Church* v. *Pickett*, 19 N. York 482; Tyler § 201; *Meth. Union Ch.* v. *Ricket*, 23 Barb. R. 437; *First Bap. Soc.* v. *Rapeley*, 16 Wend. 605; *Jackson* v. *Leggett*, 7 Wend. 377, Tyler § 121; *Jones* v. *Carey*, 6 Maine 448; *Parsonsfield* v. *Dalton*, 5 Maine 217; *Coxe* v. *Walker*, 26 Maine 504; *Rogers* v. *Danby U. Soct.*, 19 Vt. 187; *Wood* v. *Cushing*, 6 Metc. 448; *Wiggin* v. *Lowell*, 8 Id. 301; *Ladd* v. *Clements*, 4 Cush. 476; *Howard* v. *Hayward*, 10 Metc. 408; *Toby* v. *Wareham*, 13 Id. 440; *Townsend* v. *Lowell*, 6 Cush, 279; Tyler § 442; *Whitmore* v. *Plymouth*, 2 Gray 306; *Oaks* v. *Heil*, 14 Pick. 442; *People* v. *Peck*, 11 Wend. 604; *Brown* v. *Savage*, 5 Jurist 1070; *Rogers* v. *James*, 7 Taunton 747.

Evidence of a continuous corporate existence: *M. E. Church* v. *Picket*, 19 Barb. N. Y. 486: 23 Id. 437, 486. Mere use does not make corporation *de facto*; *Van Buren* v. *Ref. Ch.*, 62 Barb. N. Y. 495.

Right to vote at corporate elections: see note 59, *ante*. Hoffman Ecc. L. 62, 64, 24. See cases cited pp. 27, 29, 31 N. Y. Stat. of 1786; *Robertson* v. *Bullions*, 11 N. Y. (1 Kernan) 243; *Jackson* v. *Nestles*, 3 Johns. 115, 135; *Baptist Ch.* v. *Witherel*, 3 Paige 296; *Weckerley* v. *Guyer*, 11 S. & R. 35; *Com.* v. *Cain*, 5 S. & R. 510; *Yaker* v. *Com.*, 20 Pa. St. 484; *Miller* v. *English*, 1 Zabr. 317; *Sutter* v. *Trustees*, 42 Pa. St. 503; *Sparrow* v. *Wood*, 16 Mass. 475; *Oaks* v. *Hill*, 10 Pick. 333; *Keith* v. *Howard*, 24 Id. 292; *Dawson* v. *Towle*, Hardrees' R. 378, Hoff. Ecc. L. 91; *People* v. *Tuthill*, 31 N. York 550; *State* v. *Crowell*, 4 Halst. 390; *Watervleit* v. *McKean*, 6 Hill 616; *People* v. *Phillips*, 1 Denio 388; *Parish of B.* v. *Tooker*, 29 Barb. 256; *Petty* v. *Tooker*, 21 N. Y. 267; *Robertson* v. *Bullions*, 11 N. Y. 243; *Doremus* v. *Dutch Ref. Ch.*, 2 Green Ch. R. 332; *Ross* v. *Crockett*, 14 La. Ann. 811; 31 N. Y. R. 550; *Erbaugh* v. *Germ. Ref. Ch.*, 3 E. D. Smith 30; *Germ. Ref. Ch.* v. *Basche*, 5 Sandf. S. C. R. 666.

Remedy of members expelled: *Marion Ben. Soc.* v. *Com.*, 31 Pa. St. 82; Moses Mandamus 184; 2 Blackst. Com. 37; 1 Kyd Corp. 15. Note 57, *ante*.

Right of members as to temporal concerns: Compromise suit, *Horton* v. *Bapt. Ch.*, 34 Vt. 309.

How vote taken: *Wardens* v. *Pope*, 8 Gray 140; *People* v. *Lacoste*, 37 N. Y. 192; *M. E. Ch.* v. *Picket*, 19 N. Y. 482; *Rex* v. *Mayor*, Maule & Selwin 697; *Matter of Mohawk R. R.*, 19 Wend. 133; Hoff. Ecc. L. 38, 46, 67; *People* v. *White*, 11 Abbott 168; *Hart* v. *Harvey*, 32 Barb. 55.

Rector of parish presides: *Wilson* v. *Mackmath*, 3 Phil. 68; *Queen* v. *Doyly*, 4 Perry & Davidson 58; Hoff. Ecc. L. 48, 66, 22; See Hoffman's Law of Ch. 323–5; Ecc. L. 79; *People* v. *Peck*, 11 Wendell 604; Wilcox Corp. 1–59.

The rule of the common law that *infants* cannot vote in civil corporations is applicable to religious corporations: Hoff. Ecc. L. 63; *Robertson v. Bullions*, 11 N. Y. 243; Grant Corp. 5, 6, 422; McPherson on Infancy 448; Hobart 525–2 Inst. 47: *Claridge* v. *Evelin*, 5 Barn. & Ald. 81.

Are ineligible to office. Votes cast for them void: *Claridge* v. *Evelyn*, 5 Barn. & Ald. 81; *Rex* v. *Hawkins*, 10 East 218; Wilcox Corp. § 480.

As to officers holding over: *People* v. *Tiernan*, 8 Abbot 359, Hoffman 69; *People* v. *Phillips*, 1 Denio 388.

Proxies not allowed except by special provision: Hoff. Ecc. L. 64; *Rex* v. *Ellis*, 17 State Trials 822; *Phillips* v. *Wickham*, 1 Paige 598; *Case of Dean and Chapter*, Sir John Davis's R. 129; *Taylor* v. *Griswold*, 2 Green N. J.; 2 Kent 229.

Notice of election; *Wilson* v. *Dennison*, Ambler R. 182; 4 Barn. & Cress. 441; *Smith* v. *Lane*, 21 N. Y. 296; Wilcox Corp. § 59.

Election valid if majority neglect to vote: Hoffman 66; *Goslin* v. *Vesey*, 7 Queen's Bench 439; *Rex* v. *Foxcroft*, 2 Burrows 1020; *Crawford* v. *Powell*, Id. 1016; *Regina* v. *Mayor*, 7 Ad. & El. 963. See *Rex* v. *Morris*, 4 East 26; *Rex* v. *Thornton*, Id. 307; *Rex* v. *Miller*, 6 T. R. 278; Hoff. Ecc. L. 71; *Rex* v. *Devonshire*, 1 Barn. & Cress. 609; *Rex* v. *Qellringer*, 4 T. R. 810; *St. Marys Church case*, 7 S. & R. 517; *Beck* v. *Hanson*, 9 Foster N. H. 213; *Rex.* v. *Brewer*, 1 Barn. & Cress. 492, cited in *Whiteside* v. *People*, 26 Wend. 643; *Ex parte Rogers*, 7 Cowen 527; Burns' Ecc. L. 2; 92; *Case of Cathedral Church of Carlyle*, 2 Burns 113.

As to power to adjourn: *Stoughton* v. *Reynolds*, 2 Strange 1045, Fortescue R. 168; *Baker & D.* v. *Wood*, 1 Curtis R. 552; *Rex* v. *Commissary*, 7 East 573; *Rex* v. *Archdeacon*, 1 Adol. & El. 342; *Queen* v. *Doyly*, 4 Perry & Davison 58; *Rex* v. *Norris*, Barnardiston R. 385; but see *Rex* v. *Butler*, 8 East 393 and *Rex* v. *Gaborean*, 11 East 87; *Whiteside* v. *People*, 26 Wend. 643, approves *Rex* v. *Norris*; *Ex parte Rogers*, 7 Cowen 527 *n.*

As to "casting vote:" *Remington* v. *Rector*, *&c.*, Hoffman's Ecc. L. 80, and cases cited. In note to p. 78 authorities are cited as to case of an officer authorized to call a meeting who refuses to act.

Power to make by-laws; note 55, *ante*; *Eden* v. *Foster*, 2 P. Wms. 327; *Att'y.-General* v. *Pearson*, 3 Mer. 411; *King* v. *Beeton*, Burrows R. 2260, 19 Wend. 37; *Com.* v. *Cain*, 5 S. & R. 510; *Taylor* v. *Griswold*, 2 Green N. J. 223; *Vestry* v. *Matthews*, 4 Dess. R. S. C. 578; *McDermott* v. *Board Police*, 5 Abb. R. 422; *Brick Ch.* v. *Mayor*, 5 Cow. 388; Hoff. Ecc. L. 186.

Trustees no power to close church in New Jersey: *Morgan* v. *Rose*, 22 N. J. Eq. 583.

As to appointment of Trustees: *South Bap. Ch.* v. *Tracy*, Hoffman Ecc. L. 188; Hopkins R. 279; *Trustees* v. *Vernon Soct.*, 6 Cow. 23; *All Saints Ch.* v. *Lovell*, 1 Hall R. 198.

Dissolution of corporation: *Kondar* v. *Vanmore*, 12 Modern 274; *King* v. *Passmore*, 3 T. R. 242; *People* v. *Runkle*, 9 Johns. R. 147; *Att'y.-General* v. *Bank*, Hopkins R. 301; *Slee* v. *Bloom*, 5 Johns. Ch. R. 379; *Trustees* v. *Hills*, 6 Cow. 23; Corp. of Banby, 10 Modern 346; *Phillips* v. *Wickham*, 1 Paige R. 590; Hoff. Ecc. L, 193; 2 Kent 312; Wilcox Corp. § 807.

Mandamus. Will admit minister to preach *if there be emoluments:* Moses Mandamus 182; *Rex* v. *Barker*, 3 Burr. 1265; *Runkel* v. *Winnemiller*, 4 Har. & McHen. 430; *Union Ch.* v. *Saunders*, 4 Am. Law Reg. 378. See *People* v. *Steele*, 2 Barb. 397. But ecclesiastical decision conclusive: *Connett* v. *Ref. Ch.*, 4 Lans. N. Y. 399; *Batterson* v. *Thompson*, 1 Pa. Legal J. 171.

As to mandamus generally: *Tartar* v. *Gibbs*, 24 Md. 337, 2 Ohio 108, 11 Ohio 24.

Forms for the *legal* organization of corporations under general laws may be found as follows:—

In answer to the several inquiries above mentioned it may be said generally:

1. In most of the states special acts of incorporation may be granted, and some of these have made provision also for church corporations by proceedings under general laws.

In some states it is provided in substance, as in the Ohio Constitution of 1851, that the legislature "shall pass no special act conferring corporate powers," but that "corporations may be formed under general laws."

This is the only form of restriction upon the *creation* of religious corporations in the United States. Their powers were limited in England by the Mortmain Statutes, and the Statute of Wills of 32 Henry VIII., in one respect a branch of the law of Mortmain, but modified by the Statute of Charitable Uses. Corporations were restricted, as we have already seen, in the power to execute trusts. These statutes were adopted in some of the states either as a part of their common law, or by force of express statute, and have since been retained or modified in many respects, while in others they have never been in force, or only in a limited and modified degree. The consideration of these has occupied many volumes, and each of these or analogous statutes should, in a work on the law of religious societies, occupy at least a separate chapter.[70]

2. This form of church organization is very well adapted to re-

---

New York.—Hoffman's Ecc. L. Appx. 323–328; Tyler Ecc. L. 117, §§ 135, 143, 161, 182. See Hoffman 94, 96, 111, 133, 311; N. Y. Stat. as to Catholic Churches, March 25 1863.

New Jersey.—Roman Catholic "Statuta Novarcensis Diocoeseos," &c. 84.

Pennsylvania.—For Episcopalians, see Const. and Canons Prot. Ep. Ch. of 1872, p. 43; churches generally, Tyler § 547.

One of the best forms to preserve property for denominational purposes will be found in *Schnorr's Appeal*, 67 Pa. St. 138.

Missouri.—For Episcopalians: Journal 31 An. Conv., May 1871, pp. 33, 122; Journal for 1872, pp. 120–127.

Maryland.—For Episcopalians: Compilation Constitution and Canons 1863, p. 35; see note 38, *ante*.

As to Shakers: see note 36, *ante*; *Anderson* v. *Brock*, 3 Maine 243. Moravians: see note 38, *ante*. Mormons: note 52, *ante*.

For *ecclesiastical* organization forms: see notes 38–56, *ante*.

The ecclesiastical organization does not, under all statutes, necessarily precede the legal; Hoffman Ecc. L. 20, 47; Hoffman's Law of the Church 276.

[70] See on these subjects notes *ante* 11, 48, 49, 53, and Hoffman's Ecc. L., chap xvi. Note 72, *post*.

ligious societies of the Congregational class, and if there be no provision to the contrary the members of the corporation who elect the officers who manage the corporate property may elect such as will hold it for the religious faith which they may, from time to time, choose to adopt.

3. But a religious corporation, even of the Congregational class, may, by proper provisions in the act of incorporation or deed which conveys property to the corporation, or by articles of association legally recognised in the charter, have property devoted to its use for the purpose of propagating a particular and defined unchangeable religious faith. See notes, *ante*, 53, 54, 55, 67.

4. This form of church organization may be of the Associated class, in connection with and subject to the authority of some higher ecclesiastical body. But to secure the corporate franchises and property to those who remain in the ecclesiastical connection, and subject to the higher ecclesiastical bodies, the charter or title-deeds of property must so explicitly or by necessary implication declare.[71] And even *this* will not bind the members of the corporation to adhere to the *faith* of the churches in this connection unless that too is provided for by adequate provisions.[72]

But all this is subject to this qualification, that where *by the charter* the members of the *ecclesiastical body* of the church are recognised as the members of the *legal corporate body* and entitled to control it, if the higher ecclesiastical bodies have jurisdiction to determine who, in case of controversy, are the true ecclesiastical body, their decision will be deemed conclusive in the courts.[73] The same rule, of course, prevails also when a particular society is not incorporated.

FIFTH FORM OF CHURCH ORGANIZATION—INCORPORATED SOCIETY FOR THE USE OF WHICH PROPERTY MAY HE HELD BY UNINCORPORATED TRUSTEES.

It is, perhaps, not strictly and technically accurate to say this is a form of *church* organization. This dual arrangement is rather

---

[71] See notes 53, 54, 55, 67.

[72] *McBride* v. *Porter*, 17 Iowa 206. Note 55, *ante*.

[73] See notes 30–45, *ante*. And as to conclusiveness of ecclesiastical determinations: High on Injunctions, chap. v.; *Harmon* v. *Dreher*, 1 Speer's Eq. 87; *State Missouri* v. *Farris*, 45 Mo. 183; *Connitt* v. *Ref. Ch.*, 4 Lans. N. Y. 399; *Batterson* v. *Thompson*, 1 Pa. Leg. Gaz. R. 171.

a means by which property may be held for an incorporated religious society. And the same may be said as to some of the other arrangements mentioned. But for the sake of convenience this classification may be adopted.

It will rarely happen in practice that this dual arrangement will exist. And yet a donor or devisor of property may sometimes desire it, or the members of a church corporation may prefer it.

Corporate property is generally liable for corporate debts, and it is subject to the control of such officers as the corporate electors may choose. It is not unusual to grant property to common law trustees for a corporation thereafter to be created.[74]

And it will sometimes happen that it may be desirable to create and perpetuate a trustee or trustees for a religious corporation, either to hold property free from corporate debts, or to secure the greater skill of selected trustees, or to limit it to purposes which might be defeated under existing corporate powers, and for many similar or other reasons. Property has been frequently held for corporations by unincorporated trustees.[75]

---

[74] *Miller* v. *Chittenden*, 1 Iowa 315; *Ref. Dutch Ch.* v. *Veeder*, 4 Wend. 494; *South Bap. Ch.* v. *Yates*, Hoff. 142; *Bap. Ch.* v. *Witherell*, 3 Paige 298; *Voorhees* v. *Presby. Ch.*, 8 Barb. 135; *Canajoharie & P. Ch.* v. *Leiber*, 2 Paige 43; *Bundy* v. *Birdsall*, 29 Barb. 31; *Miller* v. *English*, 1 Zabr. 317; *Miller* v. *Chittenden*, 2 Iowa 315; *Johnson* v. *Trustees M. E. Ch.*, 4 Iowa 180; *M. E. Ch.* v. *Wood*, 5 Ohio 283. See note 64, *ante;* note 72, *post;* Hoffman's Ecc. L. 16–20, 109.

As to devises and purchases in name of an incorporated society which vest in corporation see note 48 and 52, *ante; Dutch Ch.* v. *Mott*, 7 Paige 77; *People* v. *Fulton*, 11 N. Y. 94.

One trustee cannot sue another: *Trustees M. E. Ch.* v. *Stewart*, 27 Barb. 553.

As to Statute of Uses in this class of church organizations and generally see note 63, *ante.*

[75] *Jackson* v. *Nestles*, 3 Johns. R. 135; *M. E. Ch.* v. *Wood*, 5 Ohio 283; *Bundy* v. *Birdsall*, 29 Barb. 31; *Brooke* v. *Shacklett*, 13 Gratt. 301; *Second Cong. Sovt.* v. *Waring*, 24 Pick. 304; *Van Houton* v. *First Ref. Ch.*, 17 N. J. Eq. (2 C. E. Green) 126; *Trustees* v. *Dickenson*, 1 Dev. Law 189; *Associate Ref. Ch.* v. *Trustees*, 3 Gr. C. R. 77; *Doremus* v. *Dutch Ch.*, 2 Gr. C. R. 332. And see *Hamblett* v. *Bennett*, 6 Allen, 140; *Ref. M. Soct.* v. *Draper*, 97 Mass. 349; *Walker* v. *Fawcett*, 7 Ired. L. 44; *Voorhes* v. *Presby. Ch.*, 8 Barb. 135; *Robertson* v. *Bullions*, 9 Barb. 64; *People* v. *Steele*, 2 Barb. 397; *—iller* v. *Gable*, 2 Denio 492.

When trustees personally liable on covenants in deed of sale: *Klopp* v. *Moore*, 6 Kansas 27.

See *Barnett's Appeal*, Sup. Ct. Pa. 1863, 11 Pittsb. Legal J. 210.

In answer to the several inquiries heretofore suggested it may be said in general terms:—

1. This arrangement is aided by the usual principles of equity jurisprudence in the states generally.

Lyne Starling, by deed of 18 Dec., 1847, conveyed real estate in Columbus, Ohio, to trustees, with directions to procure an act of incorporation for "Starling Medical College," and hold property for its use. This deed is a model in form. See the act of incorporation of January 28th 1848, Local Laws, vol. 46, p. 31.

The Ohio Act of March 23d 1850, provides that property conveyed to trustees "for the use of any religious society, whether incorporated or not, shall be held by the trustees and their successors, appointed as provided in the instrument creating such trust." 2 Curwen Stat. 1554.

Property may doubtless be conveyed directly to a corporation duly authorized with proper powers, in such manner and with such trusts as would exempt it from general corporate debts, and devote it to particular purposes. See notes 11, 53, 64; *Tucker* v. *St. Clement's Ch.*, 3 Sandf. S. C. R. 242, affirmed 4 Seld. 558 *n*; *Williams* v. *Williams*, 8 N. Y. 525; *Levy* v. *Levy*, 33 N. Y. 97; *Bascom* v. *Albertson*, 34 N. Y. 584. The will of John Harpending of May 1723, devised real estate to a Dutch Church corporation in New York, for payment of minister's salary; Hoffman Ecc. L. 107 122. This was held invalid under the Stat. of Wills of Henry VIII., but the title was held good by adverse possession and presumption of conveyance; *Att'y.-Gen'l. ex rel. Marsellus* v. *The Minister, &c.*, N. Y. Court of Appeals 1867; *Harpending* v. *Dutch Ch.*, 16 Peters 455; *Humbert* v. *Trinity Ch.*, 22 Wend. 485; *People* v. *Trinity Ch.*, N. Y. Court Appeals Sept. 1860; *Jarboe* v. *McAtee*, 7 B. Monroe 279; *Jackson* v. *McCall*, 10 Johns. 380; *Barrow* v. *Bearm*, 10 Ohio 503; *Dutch Ch.* v. *Mott*, 7 Paige 77; *Bap. Ch.* v. *Witherell*, 3 Paige 298. See the authorities collected in 2 Greenl. Ev. § 539, and Washburn's Easements and Servitude 66–68.

As to Stat. of Wills see notes, *ante* 11, 49, 51, 53; *Tucker* v. *St. Clement*, 3 Sandf. 242; *Ayers* v. *M. E. Ch.* 3 Sandf. S. C. R. 351; *Jackson* v. *Hammond*, 3 Caines Cases 337; see note 53, *ante*; *Dutch Ch.* v. *Mott*, 7 Paige 77.

New York Stat. April 9th 1855 (Laws c. 230) repealed Act April 8th 1862 (Laws c. 147); Hoff. Ecc. L. 145–147. The Act of April 13th 1860 prohibits devises by persons having a husband, wife, child or parent, of over one half testator's property. See Stat. of April 17, 1848, and *Beekman* v. *People*, 27 Barb. 304; *McCaughall* v. *Ryan*, 27 Barb. 376; *King* v. *Rundle*, 15 Barb. 139.

See Hoff. Ecc. L. 147, 184, 212, and as to devises to corporations 178. The Stat. of Wills of 32 Hen. 8, copied in N. Y. Stat. of March 3d 1787, in the revised Act of 1813 denied the power to devise to corporations. By the Act of 1830 this was changed so that corporations were incapable of taking devises *unless expressly authorized by charter.*

The Stat. 43 Eliz. (1602) partially repealed the Stat. of Wills of Hen. 8 and "enabled a devisor to limit and appoint lands for any object enumerated or within the intendment of the Act." Hoff. Ecc. L. 181; Grant Corp. 115; *Wright* v. *—eth. Ch.*, Hoffman's Ch. Rep. 262; see note 49, *ante*. The Act of Geo. 2 (1734), the "crowning Statute of Mortmain," prohibited alienations including devises to corporations or for charitable uses unless by deed executed and enrolled twelve months before the death of the donor and grantor.

There is, it is believed, no prohibition and no limitation, except only that trusts cannot be created for any illegal purpose.

So far as Mortmain or other statutes impose limitations on religious corporations their provisions could not be evaded by a resort to trustees. Notes 53–63, *ante.*

2, 3, 4. This arrangement is appropriate whether the religious corporation is of the Congregational or Associated class, whether for a church having by its organization the right to change its creed and form of church government, or for one having property devoted to a particular faith and government.

SIXTH FORM OF CHURCH ORGANIZATION—INCORPORATED RELIGIOUS SOCIETY WITH PROPERTY HELD BY TRUSTEES HAVING CORPORATE OR QUASI CORPORATE CAPACITY.

The reasons for such an arrangement as this are substantially the same as may exist for the preceding form of church organization, and all that has been said as to that will be substantially applicable here. The only difference between the preceding form and this is, that the trustees in the form of church organization now contemplated, though not strictly a corporation, yet have *some* of the attributes of a corporation.[76]

---

[76] The Act of Congress of June 17th 1844, authorizes a conveyance or devise "to one or more trustees for the use and benefit of any *religious congregation* as a place of public worship." It declares that "a majority of the acting trustees for any *such congregation* may sue and be sued in *their own names*," &c. See note 49, *ante.* The Ohio Act of January 3d 1825, gives trustees a *quasi* corporate capacity to hold property "in trust for the use of any *religious society.*" Now a "*congregation*" or "*society*" does not cease to be such if it becomes incorporated. It only becomes an incorporated congregation or society. A *liberal* rule of construction would doubtless be adopted, and it would *seem* that under these and similar statutes, trustees with *quasi* corporate powers may hold property for a corporation for any purpose which the corporation might hold, and with conditions annexed not inconsistent with law. At all events such an arrangement is both possible and practicable.

WM. LAWRENCE.

BELLEFONTAINE, O.